Petition

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

No. _____

M. THORA WORRELL

PETITIONER

v.

B.F. GOODRICH COMPANY

RESPONDENT

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

M. THORA WORRELL
IN PROPRIA PERSONA

P.O. Box 7430
MENLO PARK, CA 94025

QUESTIONS PRESENTED

1) Whether the Court of Appeals, constitutionally, may render a decision, in conflict with decisions of this court, and other courts of appeals, setting aside the Due Process and Equal Protection Clauses of the Fourteenth Amendment, as they apply to an alien minority immigrant, as to call for an exercise of this Court's power of supervision and correction. a) Appellate Court's misreading bases for appeal; b) Considerations Governing Review on Certiorari.

2) Whether the Court of Appeals may set aside, under a Title VII claim: a) Credible Evidence Standards: Burden of Proof; competent evidence under 28 U.S.C. §1732, n. 51, 81; b) Doctrines, Principles, Standards under 28 U.S.C. §1291, n. 259; c) Perjured Testimony Used Against Plaintiff: 18 U.S.C. §§§1001, 1621, 1623.

3) Whether the Court of Appeals incorrectly substituted an unique standard of these statutes and The Constitution and applied an unique and new set of standards to disparate treatment for Title VII, 42 U.S.C. §2000e *et* seq., where the plaintiff is an alien minority immigrant, and thereby abrogating petitioner's guaranteed Constitutional rights.

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Opinions Below

The decision and order of the United States District Court for the Northern District of Ohio, Eastern Division (Akron), are unreported. (Appendix A, infra, pp. 1a-10a.) The opinion of the United States Court of Appeals for The Sixth Circuit is unreported. (Appendix B, infra, pp. 11a-12a.) Petition For Rehearing & Appellant's Affidavit, (Appendix C, infra, pp.13a-21a). Defendant's "Proffered Answer and/or Response to Plaintiff-Appellant's Petition For Rehearing.', (Appendix D, infra, 22a-26a). Order denying Petition For Rehearing, (Appendix E, infra, pp. 27a). Affidavit, Norman S. Carr, (Appendix F, infra, pp. 28a). Affidavit, Jaime M. Lewis, (Appendix G, infra, pp. 29a). Affidavit, Appellant, M. Thora Worrell, (Appendix H, infra, pp. 30a-34a). Statutes (Appendix I, infra, pp. 34a-end).

Jurisdiction

The opinion of the Court of Appeals was filed on May 5, 1981. A timely Petition for Rehearing was filed on May 21, 1981. That Petition was denied, June 16, 1981.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1) Whether the Court of Appeals, constitutionally, may render a decision, in conflict with decisions of this Court, and other courts of appeals, setting aside the Due Process and Equal Protection Clauses of the Fourteenth Amendment, as they apply to an alien minority immigrant, as to call for an exercise of this Court's power of supervision and correction.

   a) Appellate Court's misreading bases for appeal;

   b) Considerations Governing Review on Certiorari.

2) Whether the Court of Appeals may set aside, under a Title VII claim:

   a) Credible Evidence Standards: Burden of Proof; competent evidence under 28 U.S.C. §1732, n. 51, 81;

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   c) Perjured Testimony Used Against Plaintiff: 18 U.S.C. §§§1001, 1621, 1623.

3) Whether the Court of Appeals incorrectly substituted an unique standard of these statutes and The Constitution and applied an unique and new set of standards to disparate impact and disparate treatment for Title VII, 42 U.S.C. §2000e et seq., where the plaintiff is an alien minority immigrant, and thereby abrogating petitioner's guaranteed Constitutional rights.

STATUTES INVOLVED

This case involves the interpretation and the application of Constitutional guarantees an alien minority immigrant should have under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, as they apply to 42 U.S.C. §2000e et seq.; 28 U.S.C. §1732, n.51, 81; 18 U.S.C. §1001, §1621, and §1623, where the United States Departments of Labor, Justice and State, issued to Petitioner H-1 visa, and subsequently Permanent Residency Visa, under 8 U.S.C. §1153(a)(3).

STATEMENT OF THE CASE

Petitioner, Mrs. Worrell, was employed by the B.F. Goodrich Company, June 3, 1974 to March 4, 1977, when seh was terminated/discharged summarily, within three hours of Respondant's Management receiving official notification by the Ohio Civil Rights Commission that Title VII charges of unequal pay and other violations had been filed, February 28, 1977, against Goodrich. An action was brought before the U.S. District Ct., Akron, Ohio, which judgment against Petitioner, was based almost entirely on the perjured deposition testimony of John J. Bell, an absent witness (See Appendix C, infra). Appeal was sought in the Sixth Circuit Ct. of Appeals, citing a) clear error, b) misapplication of legal standards, and c) failure to base judgment on prima facie documented evidence presented by Appellant (Petitioner), versus no competent evidence of rebuttal by Goodrich.

The court below misunderstood/misread Plaintiff's Briefs, indicating in their Order of Affirmation, that Appellant alleged that the trial court examined the evidence, and found for defendant, when, in fact, Appellant alleged the opposite: failure to examine

the evidence, and so found for defendants, holding inter alia, that statistical evidence of no probative value, held Petitioner responsible for not fulfilling assignments given to her by a supervisor, (absent, deposition witness), EIGHT MONTHS BEFORE HER HIRE, held her to have "disruptive" tendencies never manifested in 46 years. The court below upheld the decision, but also erred, according to the honored doctrineof Stare Decisis, by reversing a prior panel opinion (not granted in error), of the same court, in the same case. Petition for Rehearing was sought and denied.

REASONS FOR GRANTING THE WRIT

I. ABROGATION OF SETTLED LAW IS IN CONFLICT WITH RULINGS OF THIS COURT AND OTHER CIRCUIT COURTS

The Court of Appeals rendered a judgment in direct conflict with the holdings of the several appellate courts which have interpreted various statutes in determining racially- and gender-based animus in treatment and impact: 42 U.S.C. §2000e et seq.; 28 U.S.C. §1291 n.259; §1732, n.51, n.81; 18 U.S.C. §§§1001, 1621, 1623. The ultimate inquiry in each instance is: Do the facts of this case warrant their similar interpretation, application and relief, for an alien minority immigrant?

A. FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS AND EQUAL PROTECTION

> Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Supreme Court has held in Yick Wo v.

Hopkins, 118 U.S. 356 (1885), that the Civil War Amendment applied to all persons within the territorial jurisdiction of the United States, without regard to any differences of race, of color, or of nationality, and the equal protection of the laws is a pledge of the protection of equal laws; Id. at 369. Inclusive in this Court's perception and understanding of discrimination, it held that practices that appeared neutral on their face, but were discriminatory in application, was a "denial of equal justice (and) still within the prohibition of the Constitution."

The court below was negligent in its duty to insure Petitioner (Appellant) of her constitutional right to Due Process and to Equal Protection, despite her alien resident status (8 U.S.C. §1153(a)(3)). Such status followed an H-1 Visa, defined as an immigrant of "distinguished merit and ability," issued to Worrell, March 31, 1974. (To remain in the U.S. this Visa must be renewed, annually, by employer's application to the Department of Justice, prior to, but not

later than, March 15, until alien nonimmigrant achieves permanent residency status.)

1) Court's Interpretation of Appellant's Bases For Appeal.

The court below affirmed the trial court's Judgment. (Appendix A , infra, p.1A), contending the bases contested the "District Court's conclusion that the evidence failed to show discrimination was clearly erroneous...." An accurate and careful reading of Worrell's Briefs, and Issues on Appeal, charge the trial court with, a) failure to examine the evidence submitted by Worrell, b) for having relied substantially on the perjured deposition (filed 5 days before trial) of Goodrich's former employee, John J. Bell, who "resigned" under cloudy circumstances 13 months after Worrell's hire; and c) for failing to apply applicable constitutional and statutory laws, standards, principles, doctrines, etc.

This misinterpretation by the appeals court coupled with its reversal of its own panel decision, contrary to the Doctrine of Stare Decisis (28 U.S.C. §1291, n.259, further eliminate Worrell

from guaranteed constitutional protection. U.S. v. Alfrey, 620 F.2d 551(3) (5th Cir. 1980) (Court of appeals is bound by prior panel decision of the court."); California State Board of Equalization v. Goggin, 245 F.2d 44, cert. denied, 353 U.S. 961 ("Court of Appeals should respect and follow its previous opinions."). It is held that only for the most compelling reasons, "...it was error to disregard the stare decisis effect of that ruling absent a strong showing that it was 'palpa 'palpably erroneous' in fact of law." Pachmayr Gun Works, Inc., v. Olin Mathieson Chem. Corp., 502 F.2d 802, 805 (9th Cir. 1974).

2) Considerations Governing Review On Certiorari

Rule 17.1.(a)

> When a federal court of appeals has rendered a decision in conflict with a decision of another federal court of appeals on the same matter;...or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.
>
> - Rules of the Supreme Court.

The appellate judgment further abrogates

Worrell's rights to Due Process when it ignores unlawful acts by defendants, duly brought to its attention by Petitioner, and even a confession in open court (Oral Argument, Good Friday, April 17, 1981), by Goodrich's counsel, "I know there is is perjury in this case." (Appendix B,H, infra, P.12-A p.31A). The court made no comment, asked counsel no question(s) about his uncoerced confession. Such silence by the court below, on a confession of knowledge of a felony, the commission, subsequently of a felony (Affidavit of denial of said confession), is reflected in the appellate judgment. Such silence, fraud, deceit, and unlawful acts, abrogate the right to Due Process and Equal Protection of the Petitioner. Worrell's alien residency status does not preclude her expecting a fair trial and an unbiased hearing.

II: EVIDENCE: CREDIBLE EVIDENCE STANDARDS

Petitioner understands for evidence to be "probative," it must be credible, relevant, competent, and truthful (free of deceit, trickery, or willful fraud). Such was submitted to and accepted by the trial court, unapposed by defen-

dant. Worrell relied on the inherent permanence unalterability and attestibility of such written evidence capable of eliciting reasoned analyses and inferences of "truth," or proof of her allegations, vis-a-vis oral testimony, hers and/or defendant's Federal Rules of Evidence, Rule 104:

> 'Relevant evidence' means evidence having a tendency to make the existence of any fact that is a consequence to the determination of the action more probable than it would be without evidence.

Therefore, if the standard of "relevancy" is to be maintained, the question which begs an answer is whether Petitioner's preponderant primary documented evidence had any probative value and corroborated her charges of racial and gender discrimination. Worrell relies on "fact" defined by this Court in Rogers v. Richmond, 365 U.S. 534, 546 (1960): "(W)e look for 'fact' to the undisputed uncontested evidence of the record....This is all we may look to,...(i)n in any event, there must be a foundation in fact for the legal result." (Emphasis added).

A. BURDEN OF PROOF: Plaintiff's Competent Evidence

Legal standards require that plaintiff present "affirmative" evidence, "the medium or means by which a fact is proved or disproved." The (d)gree of proof," which "refers to effect of evidence rather than medium by which truth is established," was a presentation of a "preponderance of evidence."[1] Worrell so presented.

That "effect of evidence" in its affirmative preponderance, was to prove to the trial court that grievous violations of statutes and the constitution, committed by Goodrich against Worrell in her vulnerable H-1 visa status and permanent residency status (with its inherent vulnerabilities, or which defendant is not unmindful), and which acts have and continue to cause her grievous harm, isolation and segregation from her colleagues her liberty to seek and attain employment concomitant with her proven and recognized abilities, on both sides of the international border.

"Proof," the result or effect of "clean evidence," which is the medium or means by which

[1] 2 Wigmore §280 (Chadbourn 1979), p.145.

"facts" are proved or disproved, was submitted to trial court. Worrell awaited '(b)elief' defined:

> 'a subjective condition resulting from proof. It is a conviction of the truth of a proposition, existing in the mind, and induced by persuasion, proof, or argument addressed to the judgment.[2]

The preponderance of primary, direct, and relevant evidence Worrell submitted, and was accepted into evidence, cannot, objectively evaluated, or juxtaposed to proven perjured depositional testimony and irrelevant documents, by reasonable minds, juridical precedent based on settled law, have resulted in victory for Goodrrich. Having met her burden of proof, as prescribed in McDonnel Douglas v. Green, 411 U.S. 792 (1972), "(i)" at 802, (other standards therein are inapplicable to instant case), the trial court did not dismiss Worrell's cause for lack of prima facie burden of proof, nor did Goodrich ask for summary judgment, or directed verdict, if, as the judgment states (I: 153), Worrell failed the prima facie test of McDonnell, distin-

[2]Black's Law Dictionary, 5th ed., 1979.

guished by "(ii)," "(iii)," "(iv)," herein.

In considering this question of proof, it is proper to look into those rulings under the principle of Stare Decisis, 28 U.S.C. §1291, n. 259:

> Supreme Court decisions, until overruled or modified, are binding on Court of Appeals and must be followed.

Title VII, of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq.which expressly includ the statistics factor as a significantly probative factor. (Statistics are used as probative factors in cases distinguished from Title VII.) U.S. v. Miller, 316 F.2d 81, (6th Cir. 1973), cert. denied, 375 U.S. 935 (1973). See: Neal v. Delaware, 103 U.S. 370, 397 (1880) (statistics included in "uncontradicted...counter affidavits, or by formal denial...should have been sustained.") U.S. v. Harpole, 263 F.2d 71, 78 (5th Cir. 1959) Senter v. G.M. Corp., 532 F.2d 511, 526, 527 (36, 37)(6th Cir. 1976) (cited in E.E.O.C. v. Akron Nat'l Bank & Trust Co., 497 F.Supp. 733, 745 (U.S.D.C., N.D.Ohio, E.D.(Akron), 1980)("Clearly in such a case, '(w)here gross statistical disparaties can be shown, they alone may...consti-

tute prima facie proof of a pattern or practice of discrimination.' (emphasis added), citing Hazelwood Sch. Dist. v. U.S., 433 U.S. 299, 307-08 (1977), Intern'l Brotherhood of Teamsters v. U.S., 431 U.S. 324, 336, (1977), to support the same trial court's posture and interpretation of the prima facie value of statistics! See also: Hill v. Texas, 316 U.S. 400-405, (1941); Brown v. Bd. of Education, 347 U.S. 483, 686 (1954); ("...racial discrimination, statistics often tell much....Here they are spectacular...." Alabama V. U.S. 304 F.2d 583, 586 par.2,3, (5th Cir. 1962), aff'd 371 U.S. 37 (1962); Randolph v. U.S. Elevator Corp., 452 F.Supp. 1120, 1125 (3,4) (U.S. D.C., Florida, 1978) ("U.S. Elevator's contention that statistics have no probative value in this case is also wrong as a matter of law." Citations omitted.

Each of the Petitioner's Issues on Appeal was corroborated with documented evidence which no oral testimony could refute, and which evidence meets the judicial requirements (& Wigmore's interpretation of "credible," "competent,"

and "clean" standards); The trial court applied subjective rather than judicial standards to the record before it. Compare E.E.O.C. v. Akron Nat'l Bank, supra.

Worrell's evidence comprised business documents admissible under 28 U.S.C. §1732, n. 51, 81. Appellant's breifs also buttressed her competent evidence and included excerpts of published governmental agency reports of investigations, held by this Court in Opp Cotton Mills V. Administrator, 312 U.S. 126(16), 154, 155 (1940), as admissible.

Additonally, The Federal Register, April 5, 1974 (p. 12342), the Akron press, government agencies OSHA and NIOSH reports, available to the trial court would have made it public knowledge that the B.F.Goodrich Company, a few blocks from the court house, had an horrendous problem with work-related employee deaths, first reported in October 1974, and to the appropriate government agencies forthwith. Yet, the trial court found Worrell negligent and remiss in her professional duties, (I:150, par. 3), EIGHT MONTHS BEFORE HER HIRE! It relied on the perjured deposition of

former employee John Bell, despite proof in the record before it that Bell's statements were perjured. An earlier document in his own hand while an employee at Goodrich, impeached his credibility. Several more examples were isolated for the court below -- to no avail.

Senter v. G.M. Corp., 532 F.2d 511, 526, 527 (6th Cir. 1976), found that employees are disadvantaged at securing "hard evidence" (i.e. business documents from a company's files to prove racial (or other) discrimination.) For that reason, so much emphasis is placed on statistical evidence. In addition to the latter, Worrell had evidence qualifying under the business record statute, sustaining and corroborating her charges of gross race-gender discrimination: Salary %-age increases for Worrell in 33 months = 14.72%. For White men the average was 42%, and for White women it was 49%, with no "business necessity" evidence which could explain these gross disparaties based on legitimate, nonpretextual reasons. Salary increases of 60%, 70% and 87.33% were never justified.

The list of authorities from this Court are

legion regarding the constitutional and settled law as the tests of strict scrutiny and suspectness should be applied to the record and the evidence submitted -- the preponderance comprises literally hundreds of documents -- "hard evidence" -- meeting the requirements of "competent evidence." The court below rendered judgment in conflict with decisions of all other courts of appeal on the same matter. Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975); Arnold v. N. Carolina, 376 U.S. 773 (1963); Duren v. Missouri, 439 U.S. 357 (1979); Griggs v. Duke Power, 401/ U.S. 424, 431 (1970); Neal v. Delaware, 108 U.S. 370 (1880); Yick Wo v. Hopkins, 118 U.S. 356 (1885); U.S. v. Bethlehem Steel Corp., 446 F.2d 652 (2nd Cir. 1971).

B: DOCTRINE: FAILURE TO PRODUCE EVIDENCE

This well-known doctrine has held for 227 years to the present day.

> The nonproduction of evidence that would naturally have been produced by an honest and therefore fearless claimant permits the inference that its tenor is favorable to the party's cause. Ever since the case of the Chimney Sweeper's Jewel, this has been a recognized principle.

England: Canning's Trial, 19 How. St.Tr. 312 (1754)

No witness(es) could retain, recite accurately to court, all the detailed data contained in the defendant's personnel files for 75 Corporate Support Group (Hereinafter "CSG") Managers: 68 white men; 5 white women; 1 black man; and 1 black woman, which would have to include: name and gender; date, country of birth; race; date of hire; position title since 1974; position levels corresponding; job number; performance evaluation date(s); salary (for each year, position, and %-age of salare increase(s); position created or existent; educational background and level(s); other professional expertise.

There data Worrell submitted in accordance with Federal Rules of Evidence, Rule 1006. They were compiled from original personnel computer printouts from Goodrich's Personnel Department, by the bonded Ohio Civil Rights Commission (Hereinafter "OCRC") investigator during its Probable Cause Findings. The trial court accepted them (II: 503-515; Appellant's Brief, pp. 6, 6a, 6b 7). and made no request for the originals. A) Goodrich had ample time to access identical documents;

B) The trial court not impugn the authenticity or veracity of these data, six months after trial and suspend settled law on their veracity or legal sufficiency where no rebuttal evidence is submitted by defendants. Additional analyses by Petitioner can be found in the Schedules in post-trial briefs (I: 68-73).

1. Extrapolation: Statistical Slanting

To rebut Worrell's competent evidence submitted on each charge, Goodrich failed to produce any of their personnel files, but extracted some data of 19 managers (II: 410-412) for trial, from those safely sequestered personnel computer printouts. Under 28 U.S.C. §1732, n. 81, the evidentiary weight of compilations of data for purposes of a trial are questionable, because they are deemed to be "self-serving." Allied Am. Mut. Fire Ins. Co. v. Paige, D.C. Mun. App. 1958, 143 A.2d 508, Goodrich's documents are not representative of the CSG which comprised 75 managers' statistics. Other data which had no bearing on the charges or the issues were submitted by defendants, clearly presented to the court below in

Therefore, for the trial court to invoke the McDonnell requirements for Petitioner and to dispense with them for defendant, while not rendering summary judgment nordismissing the case, is a misapplication of the laws governing Title VII litigation. The following cases demonstrate the substance and longevity of the Failure-To-Produce Evidence Doctrine: Canning's Trial, supra, (Chimney sweeper's boy found jewel, but (defendant) appraiser, refused to restore it. Jury directed to appraise it at value of best-known jewels and award damages accordingly. They did.) Brown v. Maryland Casualty Co., 55 F.2d 159 (8th Cir. 1932) (failure to produce hospital records, death certificate...inferences cannot be based on inferences); Foust v. Munson S.S. Lines, 229 U.S. 77, 86 (1936) (respondents "failure to produce from their possession and in their control, insurance policy or other evidence tends strongly to discredit their opposition to petioner's motion, and by inference to support it....burden of frank disclosure was upon debtor..." U.S. v. Dobie, 444 F.2d 417, 418, 421 (4th Cir. 1971) (government's failure to produce

sufficient documented evidence in its posession to prove it did not alter draft roll call, contrary to government's clerk's oral testimony, held to be inadequate proof contrasted to documented evidentiary proof to the contrary.

C. NO-EVIDENCE DOCTRINE:

Instead, Goodrich resorted to unlawful conduct. Deposition filed five days before trial bears no "Certification for Filing," on the docket sheet, required by F.R.C.P., Rule 11, Substantial parts of that deposition are perjured, and no specific pages were marked for the court to "peruse" before trial. Appellant's Petition For Rehearing (Denied) sets these parts out in detail. There are others. Wigmore, (2 §278 Chadbourn 1979, p.133) states:

> ...the inference...is one of the simplest in human experience...a party's falsehood or other fraud in preparation and presentation of his cause...or suppression of evidence by bribery or spoilation, and all similar conduct is receivable against him ...that his case is a weak or unfounded one....

Submission of false affidavits is common occurence in the instant case. (Appendix F infra, p.28A). Title 18 U.S.C. §§§1001, 1621, 1623 are thereby invoked. (Joint Appendix, II: 188-195)

This Court has held, consistently, that no person is immune from these sanctions Miller v. Pate, infra, at p.24; Napue v. Illinois, infra, at p.25; and companion cases cited at p.26, infra. Additionally, Respondent contravened F.R.A.P., Rule 40, and Rule 58(3) of this Court by submitting, without the appellate's invitation, an answer to Worrell's Petition for Rehearing." Express prohibition against filing a reply is found only in the Rules of the 4th, 6th, and 8th Circuits. The list of judicial and legal violations are innumerable; but all are sanctioned -- against Petitioner. For the trial court to find "Worrell's testimony on this point, and on many others is simply not credible...." * is reflective of a sociological posture with which minorities seem to have a very long sufferance:

> So, too it is common knowledge that enslaved people develop an inordinate propensity for lying....This comes...from their being subject to the caprice and exactions of their masters, and having no sense of moral responsibility to them they come to regard lying to them as no sin, and an habitual disregard of truth is thus engendered...(emphasis added).

U.S. v. Lee Huen, 118 F.1d., 442, 464 (U.S.D.C., N.D., NY, 1902). * (I.154, par.2).

C. ABROGATIONS OF DOCTRINES, PRINCIPLES, STANDARDS AND SETTLED LAW: 18 U.S.C. §1001, §1621, §1623

These are established as binding by this Court and all circuit courts, including the Sixth, but were abrogated by the appellate court in Worrell. Those abrogations are identified as follows:

1. DOCTRINE: Use of Perjured Testimony

ABROGATION: Due Process

Petitioner asserted and proved the use of perjured testimony, submitted and admitted knowledge thereof by defense counsel in open court, April 17, 1981, during Oral Argument.

Petitioner asserted and proved to the court below the use of perjured testimony, on which the trial court relied for its "findings of fact," against Plaintiff. This Court has held in Mooney v. Holohan, 294 U.S. 103 (1934); Pyle v. Kansas, et al., 317 U.S. 213 (1942); Napue v. Illinois, 360 U.S. 264, 265-272 (1958); that the presentation of false evidence is a denial of due process in criminal and in civil cases; Mooney. The knowing use of false evidence is offensive to the Fourteenth Amendment.

Bryson v. U.S., 396 U.S. 64, 67, 69 (1969); Miller v. Pate, 386 U.S. 1 (1966); Alcorta v. Texas, 355 U.S. 28, 31 (1957), ("...Truthful testimony would have impeached his credibility and corroborated petitioner's contentions.")

This Court held in Mooney, supra, that "(I)f the presentation of false evidence is a denial of due process in criminal cases, it is likewise a denial of due process in civil cases...." whether the amounts of money are large or small. This case is distinguished from Worrell, in that the trial court had before it evidence of the perjury, but chose to ignore it.

2. DOCTRINE: Ejusdem Generis.

ABROGATION: Due Process

Held: U.S. v. Branblett, 348, U.S. 503, 504 n.1 (1954), that generous interpretation is allowed on this question. U.S. v. Gilliland, 312 U.S. 86, 93, 94 n.11 (1940) ("6. The rule of ejusdem generis gives no warrant for narrowing alternative provisions which the legislature has adopted with the purpose of affording safeguards."); U.S. v. Whimpy, 531 F.2d 768, 769(2), 770(2,3) (5th Cir.

1976), used as the five-point test; U.S. v. Abrams, 568 F.2d 411, 412(6), 420(6) (5th Cir. 1978); Fraser v. U.S., 145 F.2d 145, 149(1) (6th Cir. 1945); Majestic v. Louisville & N.R. Co., 147 F.2d 621, 627(15,16) (6th Cir. 1963. This Court held in Bramblett, supra, that "no narrow interpretation of 'materiality' is allowed"; the Sixth Circuit is equally assertive on "materiality" in Majestic, supra, and Fraser. In Worrell, the court remained silent and mute on Goodrich's felonies.

3. DOCTRINE: NO-EVIDENCE

ABROGATION: Due Process

Court below affirmed trial court's "finding of Fact," (I:152), that Worrell might have become "disruptive," on discharge, and therefore, Goodrich's retaliatory discharge and summary eviction from their premises in 1 hour and 45 mins, was warranted. This Court has held: Garner v. Louisiana, 368 U.S. 157, that "(t)he records contained no evidence to support a finding that Petitioners (Negroes) had disturbed the peace...that the convictions were so totally devoid of eviden-

tiary support as to violate the Due Process Clause of the Fourteenth Amendment." Thompson v. Louisville, 368 U.S. 199 (1960)(("charges so totally devoid of evidentiary support as to render his conviction unconstitutional under Due Process Clause....question turns not on sufficiency..., but on whether this conviction rests upon any evidence at all....a violation of due process to convict and punish a man without evidence of his guilt."); Rogers v. Richmond, 365 U.S. 534, (19 60), Mr. Justice Frankfurter defines "fact." "...findings of fact may often be...influenced by what the finder is looking for...." Invitations to speak at the National Prayer Breakfast, House of Commons, Government of Canada, admission into three Who's Whos in three years, presents no probability that Worrell would have been "disruptive." The racial stereotyping is inapt, inappropriate and offensive.

4. DOCTRINE: RIGHT TO REPUTATION

ABROGATION: Due Process & Equal Protection

Held: Konigsberg v. State Bar, 353 U.S. 252, 262 par.2, 263, 264, 273 (1956), "(A)n inference

of bad moral character cannot rationally be drawn from...the record in this case....refusal to answer questions about political affiliations and opinions...racial discrimination. Pp268-269."

Stanley v. Illinois, 405 U.S. 645, 457, 651 (1971)(right to a good reputation with proof to the contrary is a denial of due process and equal protection of the laws....Inferences of bad moral character from...refusal to answer questions about political affiliations...are unwarranted....no rational justification from the evidence in the record to conclude that charachter is immoral.)

In Worrell, there is no evidence in or out of the record to support Goodrich's written reason for for discharge as, "Excessive absenteeism & tardiness," entered after discharge by defendant's personnel on life insurance transfer form. The other three variant reasons documented, by Goodrich, for discharging Worrell are: "Resigned," "Bad Attitude," and "Insubordination." None of these is supported by "facts" or inferences in the record. (I:154,n.1).

Like Konigsberg, the record proves Goodrich publicized Worrell's name in RAGAN REPORT, publication AFTER her discharge, setting the stage for inquiries and opportunity to announce, and even discuss her termination. In U.S. v. G.M. Corp., 384 U.S. 127, 140, 141 n.16 (1965), this Court held, "It has long been settled that explicit agreement is not a necessary part of a Sherman Act conspiracy...joint collaborative action was pervasive in the initiation, execution, and fulfillment of the plan." (Citations omitted). See Stanley v. Illinois, supra,; Schware v. Bd. of Bar Examiners, 353 U.S. 232, 238 (1956); Warren v. Nat'l Assoc. of Sec. Sch. Principals, 375 F. Supp. 1043, 1048 (,10), (11) (1974); Bell v. Maryland, 378 U.S. 226, 295, 296 n.16 (1963); Companion cases: Wisconsin v. Constantineau, 400 U.S. 433, 437 (1971), Held: "(T)that one's interest in his reputation, honor, or integrity is a protected liberty, as well as one's justifiable expectation of continued entitlement to employment." Fisher v. Dillard Univ., 499 F. Supp. 525 (U.S.D.C., E.D.Louisiana 1980).

The trial court asserted, and the court below affirmed that Worrell expected that her "employment was to be permanent." (I:154,n1). All reasonable minded people understand that employment can be terminated for "cause." The trial court ignored the evidence before it. Goodrich's letter of offer to Worrell did not mention "temporary" assignment dates, because it was understood, that the position was "permanent." Raising this issue the trial court puts defendant in an embarassing position of having to explain how it lawfully filed forms with the U.S. Departments of Labor and Justice, before and after Worrell's hire, stating that Worrell's assignment was "temporary." while it told Worrell it was "permanent," and indeed the letter offer would confirm that Worrell's assertions that she did not emigrate for a "temporary assignment."

5. DOCTRINE: RIGHT TO WORK

ABROGATION: "Liberty" - 14th Admendment.

Worrell has sought re-employment with herculean effort: 287 attempts yielding not one offer! Former employers are infamous for their

"retaliatory" aeal against employees who challenge the slaughter of their constitutional and statutory rights. Dunlop v. Carriage Carpet Co., 548 F.2d 139, 146, (6th Cir. 1977), quoting Hodgson v. Charles Martin Inspectors of Petroleum, Inc., 459 F.2d 303 (5th Cir. 1972).

That the court below finds no justification from the record and from well-documented companion cases in Title VII literature that Petitioner insists that "(t)he possibility of retaliation, however, is far from being 'remote and speculative' with former employees..." Dunlop, 146. "There is no ground for affording any less protection to defendant's former employees than to its present employees." Hodgson, at 306.

"Liberty" in the Constitution is defined in broad terms, increasing in itemization as social, judicial and cultural sophistication develop and refine. Monroe v. Pape, 365 U.S., 167, 170 (1959); Allgeyer v. Louisiana, 165 U.S. 578, 589 par.3 (1896), held: "...the right...to be free in the enjoyment of all his faculties, to be free to use

them in all lawful ways, to live and work where he will; to earn his livelihood by any lawful calling; ...." Butchers' Union C., v. Crescent City Co., v. Crescent City Co., 111 U.S. 746, 756-763 (188), "...'The right to follow any of the common occupations of life is an inalienable right.'...." (emphasis added).

The "facts" as defined by this Court, are incontrovertible: Goodrich interfered with, stifled, stymied, and lynched Worrell's professional career. Intermittent employment comprises filling and hauling 50-80 lb. mailbags, daily!

The trial court, and the appellate court in Worrell ignored competent evidence in the record. Instead Respondents tampered with documents to perpetrate a fraud upon the courts, committed perjury to conceal their several violations and divert all attention from themselves and their perfidy, have had resounding clarions of victory despite confessiona of guilt in open court, making a mockery of justice, the judicial system, its Thomas Mores, and Petitioner. All of this, the appellate court below affirmed.

III. STANDARDS FOR REVIEW

The standards and criteria differ in each cause, with the burden of proof on s/he who asserts, by competent evidence. Having achieved that responsibility, defendant's burden, according to Title VII precedent: Griggs, Id. at 430-431; Abrams v. Johnson, 534, F.2d 1226, 1231 (6th Cir. 1976); Day v. Matthews, 530 F.2d 1083, 1085-86 (U.S.C.A., D.C. 1976) Citations omitted. This Court held in U.S. v. Wood, that no amount of oral testimony could alter the perjury by Wood's own hand, (14 Pet. 430, (46 S.C. 604 Hammer), 1837). This holding was affirmed in Bryson v. U.S., supra. Therefore, resort to perjury; altered documents; argumentum ad hominem; concealment of a document in a series, as defendant did in employment negotiations Petitioner had with Pittsburg Plate Glass Industries, Inc.; sequestering company documents, if they exist, to prove nonpretextual "business necessity" standards for employment practices; defaming an alien's character to preclude employment (Consequence: deportment), were all that remained -- except an admission of the truth.

CONCLUSION

The Constitution provides for the equal protection of all "persons within its jurisdiction." The Court of Appeals incorrectly substituted an unique standard of interpretation of the companion clauses of the 14th Amendment, and applied a new standard to disparate impact and disparate treatment for Title VII, where the plaintiff-appellant is an alien minority immigrant. By so doing, pettitioner's rights have been abrogated, as herein summarily described.

While Petitioner's appeal to this Court is a solitary one, it is made with inextinguishable vigor. For these reasons, Worrell respectfully pleads with this Court to grant its petition for a Writ of Certiorari to the Court of Appeals for the Sixth Circuit.

Respectfully submitted,

M. Thora Worrell

M. Thora Worrell,
In Propria Persona

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Appendix

81-500

Office-Supreme Court, U.S.
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ALEXANDER L. STEVAS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

No. _____

M. THORA WORRELL

PETITIONER

v.

B.F. GOODRICH COMPANY

RESPONDENT

APPENDIX

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

M. THORA WORRELL
IN PROPRIA PERSONA

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Order
Petition for Rehearing,
Denied.

APPENDIX A

UNITED STATES DISTRICT COURT

for the

NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

M. THORA WORRELL vs. B.F. GOODRICH COMPANY	Civil Action File No. C78-207A JUDGMENT

This action came on for trial before the Court, Honorable Leroy J. Contie, Jr., United States District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered,

It is Ordered and Adjudged that judgment is hereby entered for the defendant and against the plaintiff.

Dated at Akron, Ohio, this 16th day of May, 1979.

s/_____
Leroy J. Contie, Jr.
U.S. District Judge

APPENDIX A

UNITED STATED DISTRICT COURT

NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

M. THORA WORRELL Plaintiff, v. B.F. GOODRICH COMPANY Defendant.	Civil Action C78-207A MEMORANDUM OPINION AND ORDER

The plaintiff M. Thora Worrell initiated this action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e-2000e-17, alleging that her employer, the defendant B.F. Goodrich Company (Goodrich) discriminated against her because of her race and her sex. This Court has jurisdiction under 28 U.S.C. §1343. The Court duly heard testimony and received exhibits on November 20, 21, 22, 1978. The following shall constitute the Court's findings of fact and conclusions of law as required by Rule 52, Federal Rules of Civil Procedure.

FACTS

At the convention of the American Society of Information Specialists (sic) (ASIS) in October 1973, Worrell was interviewed by Dr. Marvin Frederichs (sic)

of Goodrich. She later came to Brecksville, Ohio to meet with other Goodrich personnel. In January 1974 Worrell was offered and accepted a position with Goodrich at a salary of $20,000 per year.

Worrell had been earning approximately $16,000 at her previous job (plus $300 (sic) as a university lecturer). Worrell-- had sought a $25,000 salary from Goodrich. Worrell's supervisor in the Goodrich corporate communications department, John Bell, had expected to establish a public affairs research function at a more modest salary of $12,000 to $14,000 per year. Worrell seemed to be highly qualified, and she indicated she was entertaining other offers, so the position was made available at a higher salary.

To enable Worrell, who was a Canadian citizen, to make visa arrangements, and to permit her children to finish the school year, she did not start work at Goodrich until June 1974. Worrell submitted receipts and was reimbursed for the expenses she incurred interviewing with the company, but she did not seek reimbursement for house hunting expenses. She was reimbursed for moving expenses.

During her first year at Goodrich, Worrell never received a formal performance evaluation from her

from her supervisor John Bell. Bell did not formally evaluate any of his employees during that period because the department was in flux and he felt it would not be fair to them, or to him. At Goodrich performance evaluations were carefully distinguished from the review which accompanied merit increases in salary.

To ensure a consistent salary policy and equitable salary increases throughout the corporation, Goodrich "levelled" all jobs. The personnel department would evaluate the duties and responsibilities with each position and assign it to a numerical level. Each level had an assigned salary range, and salary increases had to be within a prescribed range. The supervisor's discretion in salary decisions was circumscribed by the level assigned to the employee's position. Worrell, and most of the employees in the corporate communications department were carried TBL: to be levelled. Because the department was still being structured, it was difficult to determine precise job descriptions for levelling purposes. At one point the personnel department tentatively levelled Worrell's position, but the level assigned would have resulted in a salary reduction, and Bell continued to carry Worrell TBL.

By December 1974 Worrell had set up several rooms she called the Public Affairs Research Center. She thought the public affairs research function was fully established and operational. John Bell, who had conceived the function Worrell was to perform, believed only a small part of the task had been accomplished. Worrell had accumulated the resources to monitor social, economic, and political trends, but she was not monitoring, analyzing, and reporting the trends. Worrell performed specific research tasks on demand, but that was only a small part of her function as Bell saw it.

The misunderstanding about Worrell's function was starkly presented when Goodrich faced a massive public relations problem concerning the effects of vinyl chloride. Bell turned to Worrell for information about which government agencies were likely to investigate the problem and what the basis of their inquiry would be. He found, however, that he had to go to outside consultants for the information which he expected to generate internally.

Bell left Goodrich in May (sic) 1975. Foster Smith took over the corporate communications department

and found he had the same problem explaining to Worrell the function he expected her to perform. Smith had to reduce the staff of the department by five people. He did not see the need for a public affairs research function as Bell had conceived it, but Smith tried to use Worrell's abilities within the department.

As part of his reorganization Smith brought in George Snider to be the director of editorial services. Worrell and three other persons in the department were put under Snider's supervision. Worrell saw the change as a dimunition of her managerial status. With Snider's arrival in January 1977, the dialogue between Worrell and Smith concerning her function in the department became a three-way discussion between Worrell, Smith, and Snider.

In January 1977 Foster Smith solicited input for the annual department plan from department personnel. Snider asked the people he supervised to provide him with a statement of their objectives and their plans for realizing them. Karas and Panyard, who like Worrell reported to Snider, did so within ten days. Despite the continuous discussion concerning her role in the department and the function she was to fill, Worrell responded that she could not comply with the request without more information.

Wanting a written description to clarify Worrell's work priorities, Snider prepared a description of the Public Affairs Research Center and submitted it for Worrell's comments and revision. Worrell received Snider's description on February 23. On March 2, Snider sent a memorandum to Worrell asking, inter alia, when he could expect a response to the description of February 23. Late in the afternoon on March 2 Worrell responded to Snider's description by giving Smith a memorandum dated February 28. A copy was sent to Snider.

Smith read Worrell's memorandum in the morning of March 3, and immediately made the decision to terminate her. He had tried to create a job for Worrell in corporation communications even though he saw no need for the function as Bell had conceived it. For several years, he, and more recently Snider, had been talking to Worrell trying to accommodate her capabilities and their needs. Placing Worrell's memorandum of February 28 against this historical backdrop, Smith knew when he read it that Worrell was unable to work within the corporate communications department and was unwilling to fill the public affairs research

function as Smith and Snider defined it. Smith found Worrell's memorandum insubordinate, and did not want her in the department any longer than necessary because he felt her continued presence would be disruptive.

Smith conferred with a number of people on March 3 concerning his decision to terminate Worrell. First, he spoke with Snider. Because Worrell is a black female, Smith also spoke with F. Terrance Flannery who was in charge of equal employment opportunity (EEO) at Goodrich. Flannery was at a Goodrich plant in Pennsylvania, but the decision was discussed with him on the phone.

On March 4 Smith met with Worrell and told her she was terminated. That same day the Ohio Civil Rights Commission (OCRC) called the EEO office at Goodrich to tell them Worrell had filed a charge of discrimination against the company on February 28. Walter Blount took the OCRC call just as he was leaving for lunch. Blount had spoken to Flannery on the phone the day before, and Flannery had mentioned that Worrell was to be terminated. When Blount spoke with the OCRC he knew that Flannery was then on his way back to the office and that Flannery would be later that afternoon. Blount told Flannery about the OCRC charge as soon as Flannery returned to

the office. Flannery in turn called Smith and learned that Worrell had already been terminated.

Beginning in 1975, and more urgently in 1976, Worrell sought immigration assistance from Goodrich. Worrell's child reached the age of majority in 1976 and lost the protection of her mother's immigration status. The immigration quotas for the western hemisphere caused delay, and Worrell's daughter faced deportation. Finally, a change in the law resolved the problem.

Worrell filed a charge of discrimination with the Equal Employment Opportunity Commission on March 9, 1977 after her discharge. Worrell received a right to sue letter on May 8, 1978 and she filed this action on May 19, 1978.

DISCUSSION AND CONCLUSIONS OF LAW

A plaintiff suing under Title VII must carry the initial burden of establishing a prima facie case of racial discrimination. McDonnell Douglas Corp. v. Green, 411 U.S. 791 (1973). Worrell has not sustained this burden.

Worrell claims she was discriminated against when she did not receive a performance evaluation during her first year of employment and because her

position was not levelled. Bell gave no one a performance evaluation. The evidence showed that had Worrell's position been levelled, her salary would have been reduced.

Worrell has a number of complaints concerning her salary. She believes that in early discussions with Goodrich she was promised a salary of $25,000 and that Bell reneged and in the end only made the $20,000 offer. The fact remains that Worrell accepted the $20,000 offer. Plaintiff claims that her salary was to be raised $5,000 when the public affairs research function was operational. The Court finds no such promise was made. Worrell's testimony on this point, and on many others, is simply not credible. She was told that if she performed well she could expect periodic raises under Goodrich merit increase policy.[1/] Even if such a promise had been made, Worrell never understood the job that Bell, and later Smith and Snider, expected her to perform; the public affairs research function was never operational.

1/ There were also occasional suggestions at trial that Worrell thought her job with Goodrich was permanent--permanent in the sense that she could not be terminated. The Court finds that Goodrich gave Worrell a job that was permanent as opposed to temporary, but that Goodrich always reserved the right to eliminate her job or to terminate her for cause.

Worrell presented two exhibits that apparently show the salary increases received by some Goodrich employees. The documents were entirely without foundation. The Court does not know whether data is presented for all the employees in a particular group or for a sample group of employees. Moreover, a number of the employees seem to have had promotions during the time reflected on the sheets. The Court does not see how those employees can be compared to Worrell who remained in the same position during her entire tenure with the company. Thus, there is no basis for the Court to find that Worrell's salary or the raises she received were discriminatory.[2/]

Worrell presented evidence that shows that some new Goodrich employees were reimbursed for expenses when they came to the Akron area to find a house. Worrell did not think the company would reimburse such expenses and did not submit receipts. This does not show discrim-

---

2/ Assuming arguendo that the figures concerning salary increases were a representative sample of employees with positions comparable to Worrell's, the figures do not show discrimination. Comparing males and femailes, the charts show the salary increases for the two groups were almost the same. Only one other black person appears on the charts, and his percent increase was above average. Worrell's salary increases were below average, but the phenomenon does not correlate with either race or sex.

ination.[3/]

From the facts it is clear that Worrell was terminated before those responsible were aware that she had filed a charge with the OCRC. Therefore the discharge could not be retaliatory. There is nothing to suggest that race or sex was a factor in the determination to discharge Worrell.

There is nothing in the record to support Worrell's belief that Goodrich interfered with her efforts to keep her daughter in the United States. Nor is there any basis for the Court to determine that Goodrich gave other employees immigration assistance that was denied to Worrell.

Worrell has detailed a number of additional incidents to show she was treated unfairly. The Court has reviewed all the allegations, and finds none of the incidents will bear the interpretation plaintiff has placed upon them. They do not show discrimination.

3/ Worrell may have tried to show that reimbursement of such expenses was against company policy. One of plaintiff's exhibits seems to state the company policy concerning reimbursement of househunting expenses. Part of the exhibit is printed, and that portion says nothing about househunting expenses. Handwritten notes on the same page indicate that househunting expenses will not be reimbursed. The Court cannot rely on the handwritten remarks because it does not know who made the notes, why they were added, or when they were added.

In sum, the evidence presented fails to show any discrimination against the plaintiff based either on her race or her sex.

Accordingly, judgment will be entered for the defendant and against the plaintiff.

IT IS SO ORDERED.

s/_____
Leroy J. Contie, Jr.
U.S. District Judge

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

NO. 79-3619

M. THORA WORRELL,
Plaintiff-Appellant

v.

B.F. GOODRICH COMPANY,
Defendant-Appellee

O R D E R

Before: LIVELY, KENNEDY, and MARTIN, Circuit Judges.

M. Thora Worrell brought this action in the District Court under Title VII of the Civil Rights Act 1964, 42 U.S.C. §§ 2000-e, alleging that Goodrich discriminated against her because of her race and her sex. Following a bench trial, the District Judge found that Worrell failed to establish a prima facie case of racial or sex discrimination, and entered judgment for the defendant.

Appellant's lengthy brief essentially makes only one argument - that the District Court's conclusion that the evidence failed to show discrimination was clearly erroneous. This court may not set aside a District Court's finding of fact unless it is clearly erroneous. Rule 52(a), Federal Rule of Civil Procedure.

Our review of the trial court's factual finding is

limited because of appellant's failure to comply with the Federal Rules of Appellate Procedure. Appellant filed only a small portion of the trial transcript, and failed to notify appellee that less than the complete transcript had been ordered, as required by Federal Rule of Appellate Procedure 10(b).

We note that we are authorized in these circumstances to dismiss the appeal. United States v. One Motor Yacht, 527 F.2d 1112 (1st Cir. 1975). However, we believe that the record provided sufficiently establishes that the findings of the trial court are not clearly erroneous.

The judgment of the District Court is affirmed.

ENTERED BY ORDER OF THE COURT

s/_____
John P. Hehman, Clerk

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

NO. 79-3619

M. THORA WORRELL,
Plaintiff-Appellant

v.

B.F. GOODRICH, COMPANY
Defendant-Appellee

ORDER

Before: LIVELY, KENNEDY, AND MARTIN, Circuit Judges.

Upon consideration of the petition for rehearing filed herein by plaintiff-appellant, the court concludes that the issues raised therein were fully considered upon the original submission and decision of this case.

IT IS THEREFORE ORDERED that the petition for rehearing be and it hereby is denied.

ENTERED BY ORDER OF THE COURT

s/_____
John P. Hehman, Clerk

Opposition

81-500

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FILED
SEP 26 1981
ALEXANDER L. STEVAS,

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

M. THORA WORRELL

PETITIONER

V.

THE B. F. GOODRICH COMPANY

RESPONDENT

RESPONDENT'S MEMORANDUM IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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LIST OF SUBSIDIARIES AND AFFILIATES

PARENT AND SUBSIDIARIES OF REGISTRANT

CONSOLIDATED SUBSIDIARY COMPANIES

The B.F. Goodrich Company (Registrant; there are no parents of the registrant)
Siltown Realty, Inc.
B.F. Goodrich International Finance Company
B.F. Goodrich International Sales Corporation
Contintental Conveyor & Equipment Company, Inc.
  Commercial Fabricators, Inc.
  Continental-Hardwicke - Etter Overseas Corporation
Tremco Incorporated
  Tremco, S.A.
  The Tremco Maintenance Service Corp.
  Kentrem Corporation
  H & H Supply Incorporated
  Bil Tech Incorporated
    Bil Tech of California
  62514 Investment Limited
    Tremco (Canada) Limited
      Tremco Limited, (London)
Carolina Rubber Hose Company
  Carco Company
    Roll Coverings, Inc.
  Carolina Disc Incorporated
International B.F. Goodrich-Service Company
Automotive Proving Grounds, Incorporated
B.F. Goodrich Australia Limited
B.F. Goodrich Chemical Limited
B.F. Goodrich Chemische Produkte Ges.m.b.H.
International B.F. Goodrich Limited
Risktech Insurance Company Ltd.
B.F. Goodrich do Brasil Industriae Comercio Ltd.
B.F. Goodrich Canada Inc.
Industria Columbiana de Llantas, S.A.
B.F. Goodrich Quimica de Costa Rica, S.A.
B.F. Goodrich Chemical (U.K.) Limited
E.P.P.C. Polyplastic S.A.
B.F. Goodrich Chemical (Deutschland) GmbH
B. F. Goodrich Chemical (Far East) Limited

PARENT AND SUBSIDIARIES OF REGISTRANT - Continued

CONSOLIDATED SUBSIDIARY COMPANIES

B.F. Goodrich Ireland Limited
B.F. Goodrich Chemical Italia, S.R.L.
The B.F. Goodrich Company of Japan, Ltd.
B.F. Goodrich Chemical Europe B.V.
B.F. Goodrich Company Private, Limited
B.F. Goodrich Chemical de Venezuela, C.A.
Industrial Asset Recovery Company

UNCONSOLIDATED COMPANIES WHICH THE REGISTRANT ACCOUNTS FOR ON THE EQUITY METHOD

B.F. Goodrich Finance Company
Japan Power Brake, Inc.
Policyd, S.A.
Compania Hulera Euzkadi, S.A.
Convent Chemical Corporation
Lima Caucho Company, S.A.
Mobex Corporation
Verfygungsmitten Handelsgesellschaft MBH
Fosroc/Tremco (M.E.)

ARGUMENT

Petitioner would request this Honorable Court to grant her Petition for a writ of certiorari based upon her contention that the finding of the United States District Court for the Northern District of Ohio was against the weight of the evidence presented at trial, and in addition, that the United States Court of Appeals for the Sixth Circuit improperly found that "the findings of the trial court are not clearly erroneous." A review of the record would show that the finding of the trial court was supported by the overwhelming weight of the evidence, and that the Court of Appeals was correct in its decision. However, this Court has historically been unwilling to grant a writ of certiorari merely to review evidence or inferences drawn from it. General Talking Pictures Corp. v. Western Electric Co., 304 U.S. 175 (1938).

Cases which turn on issues of fact generally cannot meet the standard set forth in Rule 17, REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES, mandating that a writ of certiorari "will be granted only when there are special and important reasons therefor." Indeed, this Court has stated that the "special and important reasons" which may sometimes justify the granting of a writ of certiorari imply a problem beyond academic or episodic. Rice v. Sioux City Memorial Park Cemetery, Inc., 349 U.S. 70 (1955).

Further, Petitioner filed only a small portion of the trial transcript upon presenting her appeal to the Court of Appeals, and failed to notify Respondent that less than the complete transcript had been ordered, as required by FEDERAL RULE OF APPELLATE PROCEDURE 10(b). Certainly, she could not have expected that the Court of Appeals

could have made a "weight of the evidence" analysis when she had failed to provide the necessary tools to be utilized in making such analysis.

Based upon Petitioner's failure in the Court below to comply with the Federal Rules of Appellate Procedure, Respondent, on two separate occasions, moved the Court of Appeals to dismiss the appeal based upon Petitioner's neglect in ordering the trial transcript, and her failure to designate either the parts of the record to be included in the joint appendix, or the statement of issues to be presented on appeal. Although the Court of Appeals declined to dismiss the appeal without oral argument, it stated in unequivocal language that the failure to file any trial transcript was of considerable significance. The Court stated as follows at pages 2 and 3 of its March 31, 1980 Order (Exhibit A, Appendix):

> "The Court also concludes that while the failure of the plaintiff to file a copy of the trial transcript with this Court will limit the Court's ability to review certain appellate issues, dismissal would be improper in the absence of a showing of bad faith on the plaintiff's part...However, the Court notes at this time that the procedural errors made by the appellant are serious ones, which if continued, could result in the dismissal of her action. Accordingly, we strongly suggest that appellant retain experienced appellate counsel to help her deal with the intricacies of the various rules present."

Without a transcript, the outcome was inevitable. Petitioner has no basis for a writ of certiorari whatsoever.

Petitioner's Brief addresses at length the issue of whether "perjury" was committed in the proceedings below. She has even gone to the length of accusing Respondent's trial and appellate counsel of perjury. (Petitioner's Brief, page 11.) She has in effect accused the Court of Appeals of complicity in such perjury because it "made no comment, asked counsel no question(s)

about his uncoerced confession." The simple truth of the matter is that there was nothing even resembling perjury at either level of the proceedings below. Petitioner's contentions in this regard are merely purple and exaggerated prose.

In the same light, Petitioner has contended that the trial court's judgment "was based almost entirely on the perjured deposition testimony of John J. Bell, an absent witness..." (Petitioner's Brief, page 5.) Interestingly, the Bell deposition was taken by counsel for Petitioner. The deposition was then filed and read during the trial pursuant to the appropriate Federal Rule of Civil Procedure. Petitioner was personally infuriated when "her witness" failed to support her claims.

Furthermore, Petitioner raises no conceivable question regarding either an undetermined substantive federal question, or a conflict between Federal

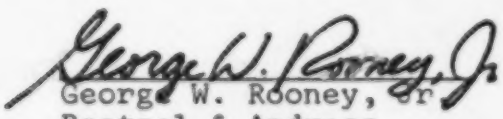
Courts of Appeals. Though she contends that the Court of Appeals below reversed "a prior panel opinion" and thus violated "the honored doctrine of Stare Decisis..." (Petitioner's Brief, page 6), Petitioner failed to cite to such opinion, or to include a copy of it in her appendix.

Petitioner has attempted to interest this Court by, for the first time, labeling herself "an alien minority immigrant"; this, notwithstanding the fact that Petitioner initiated this case as a sex and race claim. Even if the new description were accurate, which it is not, such a unilateral labeling process does nothing to create a conflict in the decisions of the various Federal Courts of Appeals, or even, alternatively, to serve as a predicate for entirely new substantive law which Petitioner herself might desire unilaterally to create. If

Petitioner had a claim under this "new category," she lost it by failing to raise it below. This Court has held that in reviewing the judgment of a Court of Appeals, it will not consider a contention which was not raised in the lower Court. State of California v. Taylor, 353 U. S. 553 (1957).

Petitioner's Brief fails to raise even a colorable basis for the granting of a writ of certiorari, whether pursuant to Rule 17, REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES, or otherwise. The Petition should therefore be denied.

Respectfully submitted,



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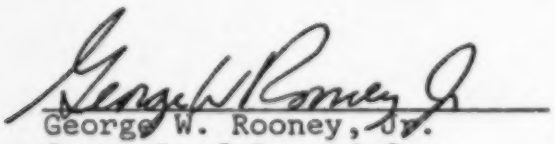
CERTIFICATE OF SERVICE

Now Comes George W. Rooney, Jr., a member of the Bar of this Honorable Court, and certifies that he has served upon Petitioner three copies of this document by depositing said copies in a United States Mailbox, with first-class postage pre-paid, addressed to Petitioner.



George W. Rooney, Jr.
Counsel of Record for
Respondent

No. 79-3619

FILED

MAR 31 1980

JOHN P. HEHMAN, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

M. THORA WORRELL,

Plaintiff-Appellant

v.

B. F. GOODRICH COMPANY,

Defendant-Appellee

O R D E R

BEFORE: WEICK, MARTIN and JONES, Circuit Judges

The plaintiff appeals from a judgment for the defendant in this Title VII action. The defendant has moved for dismissal on two occasions. The first motion to dismiss, filed September 12, 1979, and supplemented October 18, 1979, alleged the plaintiff failed to order in writing a transcript of the proceedings below within ten days of filing her notice of appeal as required in Rule 10(b), Federal Rules of Appellate Procedure, and failed to serve the defendant with a designation of the parts of the record to be included in the joint appendix as required in Rule 30(b), Federal Rules of Appellate Proceudre. The second motion to dismiss, filed November 26, 1979, alleged the plaintiff failed to serve the defendant with a statement of issues to be presented on appeal as required under Rules 10(b) and 30(b), and again alleged the plaintiff's failure to order a copy of the trial transcript for appellate purposes prejudiced the defendant's appellate defense. In addition to these motions, the defendant

also filed on October 15, 1979 an alternative motion to limit review in this appeal "to the District Court's application of the relevant law." The plaintiff, who filed her appellate brief and a "joint appendix" on November 19, 1979, moved the Court to dismiss the defendant's motion on grounds she had complied in good faith with the appellate rules.

In an Order entered January 8, 1980, this Court denied the defendant's motion to dismiss. Now the defendant moves the Court for reconsideration of that order, asserting it did not address all the defendant's motions before the Court and again arguing for dismissal on the grounds asserted above. Alternatively the defendant renews its motion to limit review in this appeal.

Upon consideration of this matter, the Court has reviewed all the defendant's motions filed in this Court as well as the plaintiff's responses and other relevant materials before the Court. It is concluded the Order of January 8, 1980 was intended to apply to all the defendant's motions then pending before the Court. The Court also concludes that while the failure of the plaintiff to file a copy of the trial transcript with this Court will limit the Court's ability to review certain appellate issues, dismissal would be improper in the absence of a showing of bad faith on the plaintiff's part. See generally, Island Creek Coal Co. v. Local Union 1827, U.M.W., 568 F.2d 7 (6th Cir. 1977); United States v. One Motor Yacht Named Mercury, 527 F.2d 1112 (1st Cir. 1975). The motion to limit appellate review was, under the

circumstances, superfluous. However, the Court notes at this time that the procedural errors made by the appellant are serious ones which, if continued, could result in a dismissal of her action. Accordingly, we strongly suggest that appellant retain experienced appellate counsel to help her deal with the intricacies the various rules present.

For these reasons, it is ordered that the motion for reconsideration be and it is hereby denied.

ENTERED BY ORDER OF THE COURT
John P. Hehman, Clerk

By Grace Keller
Deputy Clerk